Cassin v. *Delany,* 38 N. Y. 178; *Cleveland etc. Ry. Co.* v. *Himrod Furnace Co.,* 37 Ohio St. 434; *Murray* v. *Leonard,* 11 S. D. 22; *Schultz* v. *Chicago etc. Ry. Co.,* 48 Wis. 375. The reason assigned for the rule is that the passion and prejudice of the jury must have entered into every part of the verdict. *Burdick* v. *Mo. Pac. Ry. Co.,* 123 Mo. 221. And if the court permits the entry of a remittitur in such a case it is, in effect, usurping a function of the jury. *Chicago Terminal Transfer Ry. Co.* v. *Helbreg,* 99 Ill. App. 563. The rule in West Virginia seems to be that a remittitur is proper if the illegal part of the verdict is clearly distinguishable from the rest; if not, a new trial must be granted. *Chapman* v. *Beltz,* 48 W. Va. 1. In Texas the cases are in conflict but the rule last announced is that of the principal case. *Gulf etc. Ry. Co.* v. *Darby,* 28 Tex. Civ. App. 413. In England it is held that the Court of Appeal may not, without the consent of the defendant, fix the amount of the damages which it considers reasonable, and order a new trial unless defendant acquiesces in such reduction. *Watt* v. *Watt,* [1905] A. C. 115. In the United States the consent of the defendant is immaterial, as he is held to have no right to complain of the action of the court in permitting a portion of the verdict to be remitted as a condition of not granting a new trial. *Arkansas Valley Land Co.* v. *Mann,* 130 U. S. 69; *Trischet* v. *Hamilton Mutual Insurance Co.,* 14 Gray 456; *Carter* v. *Beckwith,* 128 N. Y. 312; *Branch* v. *Bass,* 5 Sneed 366; *Vinal* v. *Core,* 18 W. Va. 1; *Corcoran* v. *Harran,* 55 Wis. 120. A dissenting opinion in the principal case strongly endorses the rule followed in most of the jurisdictions that have passed upon the question, and finds no justification for a departure by the majority of the court from its holding in the previous decisions cited *supra.*

Dead Bodies—Burial—Determination of Place.—Plaintiff is the second wife of deceased who settled in South Dakota in 1877 and there attained eminence as a lawyer and public man. In 1905, plaintiff removed to, and became a resident of, Seattle, in the State of Washington, deceased procuring for her a fine house in that city. Deceased visited her three or four times and she came to Dakota about an equal number of times. While deceased was in Seattle visiting plaintiff, his death occurred, and this action was begun against the defendants, funeral directors, who were about to ship the body to South Dakota in accordance with the wishes of two sons of deceased by his first wife. It appeared in evidence that deceased had, in political utterances, asserted his intention to live and be buried in South Dakota, while letters to an adopted child and a declaration alleged to have been made on his deathbed showed an intention and desire to be buried in Washington. *Held,* that the primary right of the wife, instead of the next of kin, to control the burial of her husband, depends upon the special circumstances of the case and, in case of a dispute, the matter must be settled from the inherent equities gathered from the attending facts, which here require a decision in favor of the next of kin. *Wood* v. *Butterworth* (Wash. 1911) 118 Pac. 212.

The point involved here, possibly of little material importance, is of great interest because it borders close on the ever troublesome question of the ownership of a dead body. The Washington court is here asked for the

first time to decide the point, and finds itself confronted with a question which has been litigated in but few instances and on which the little law that exists is in a very disordered state. The cases agree that the wife has the primary right of disposal of the body as against the next of kin. In *Larson* v. *Chase,* 47 Minn. 307, 28 Am. St. Rep. 370, it is said: "This (the rule giving the wife the primary right) is in accordance not only with common custom and general sentiment but * * * with reason." *Accord*: 8 AM. AND ENG. ENCYC. OF LAW, 836; *Secor* v. *Secor,* 18 Abb. N. C. 78, noted in 10 Alb. L. J. 70; *Snyder* v. *Snyder,* 60 How. Prac. 368. Beyond this point there is little if any agreement among the cases. One line of cases, supported, it must be admitted, by none too respectable authority, holds that the wife's control is not only a primary right but an exclusive one as well, where no preference is expressed by deceased in his testament. *In re Richardson,* 60 N. Y. Supp. 539; *Secor Case, supra.* These decisions are based upon the analogy of the situation to that in which a husband asks control of his wife's body. In that case there is a well settled rule giving him the power of exclusive control. A second line of cases, admitting the primary right of the wife, considers the possession of the body a sacred trust and holds that in case there be contention, the court is to assume an equitable jurisdiction over the subject and make such disposition as seems to be most equitable in view of all the circumstances. This view is adhered to in *Larson* v. *Chase, supra,* and *Snyder* v. *Snyder, supra,* and is announced as the prevailing rule by 8 AM. AND ENG. ENCYC. OF LAW, 836. It is in general, with this line of cases that the Washington court agrees but there is discoverable no unity among these cases as to what manner of circumstances must be present to secure a decision favoring the next of kin. This court recognizing this chaotic situation is compelled to decide and does decide the case, as it states, upon the particular facts.

EASEMENTS—MERGER—USE BY OWNER OF SERVIENT ESTATE—ADVERSE POSSESSION.—Clore and Mrs. Rice owned adjoining farms. On Clore's farm there was a passway that connected the Rice farm with the turnpike. From 1865 to 1869 Mrs. Rice and her tenants used the way over Clore's land. From 1869 to 1897 Clore rented the Rice land and farmed it, continuing to use the way on his own land as Mrs. Rice had done. In 1897 Flick rented the Rice farm and continued to use the way. In 1899 Clore sold his land to Rogers, who thereafter refused to permit Flick to use the way. Without including the period of Clore's tenancy, the way had not been used adversely for the required statutory period to establish an easement by adverse possession. Flick sued to enjoin interference in the use of the way by Rogers, and for damages. *Held,* that Mrs. Rice and her tenants had used the way continuously since 1865, a period of more than forty years, without asking permission, but under an asserted right; that in ascertaining the period of adverse user, the twenty-eight years during which Clore used the way while tenant of Mrs. Rice should not be deducted, because an easement is not destroyed or extinguished by the union of the dominant and servient estates, unless the fee in both is acquired and united in the same person; and that although Clore